

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JARID L. CUBBAGE,

Petitioner,

V.

Civ. Act. No. 05-798-GMS

THOMAS CARROLL, Warden,

CARL C. DANBERG,

Attorney General of the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondents move for an extension of time in which to file an answer to the petition. In support thereof, the respondents state the following:

1. The petitioner, Jarid L. Cabbage, has applied for federal habeas relief challenging a conviction following a jury trial in the Delaware Superior Court of first degree robbery and related charges. (D.I. 2). Cabbage was sentenced to eight years in prison followed by decreasing levels of probation. The conviction and sentence were affirmed on direct appeal. *Cabbage v. State*, No. 5, 2003, 2003 WL 21488129 (Del. June 25, 2003). The Superior Court denied Cabbage's ensuing motion for post-conviction relief, and that decision was affirmed on appeal. *Cabbage v. State*, No. 168, 2005, 2005 WL 2319114 (Del. Sept. 20, 2005). By the terms of the Court's order, the answer is due to be filed on February 27, 2006.

2. Due to case load and various other matters, undersigned counsel needs additional time to prepare and file an answer to the petition. In the last six weeks, the undersigned has filed briefs in four state supreme court appeals and filed an answer in a federal habeas case in response to a petition and 70-page supporting brief. Counsel also filed on Friday February 24, 2006 an answering brief in a federal habeas appeal in a capital case pending in the Third Circuit (*Jack Foster Outten v. Kearney*, No. 04-9003). The undersigned is also involved in an internal technology/case management project which requires a priority time commitment and attended a conference on multi-state electronic crimes issues on February 15, 2006. Finally, counsel has not had the assistance of any support staff because the secretary to the Appeals Division is on an extended medical leave from December 2005 until the end of March 2006. Reassignment is impractical because, in addition to the small number of deputies who practice federal habeas litigation, the Appeals Division has a vacancy for one deputy and will have two vacancies as of March 1, 2006. Because of work load, counsel thus requests the additional time to prepare the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondents' first request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondents submit that a requested extension of time to and including March 31, 2006 is reasonable.

/s/
Thomas E. Brown (ID# 3278)
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
e-mail: *ThomasE.Brown@state.de.us*

Date: February 27, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JARID L. CUBBAGE,	:	
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Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-798-GMS
	:	
THOMAS CARROLL, Warden,	:	
CARL C. DANBERG,	:	
Attorney General of the State of Delaware,	:	
	:	
Respondents.	:	

ORDER

This _____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before March 31, 2006.

United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: February 27, 2006

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of this Court, hereby certifies that on February 27, 2006 he caused to be electronically filed a Motion for Extension of Time with the Clerk of the Court using CM/ECF. I hereby certify that I have also caused to be mailed by first class U.S. Mail two copies of the document to the following non-registered participant, the petitioner:

Jarid L. Cubbage (No. 00271683)
Delaware Correctional Center
1181 Paddock Road
Smyrna, De 19977.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: February 27, 2006